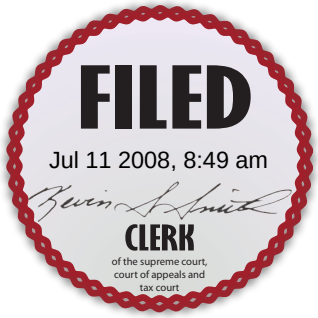

ATTORNEY FOR APPELLANT:

MATTHEW G. GRANTHAM
Bowers, Brewer, Garrett & Wiley, LLP
Huntington, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

C.R.M.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 35A02-0712-JV-1152
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35C01-0703-JD-25

July 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

C.R.M. appeals his adjudication as a delinquent child for committing an act that would be Class B felony child molesting if he were an adult.[1] Finding no error in the admission of evidence, we affirm.

FACTS AND PROCEDURAL HISTORY

C.R.M. was born February 21, 1990, and his sister C.A.M. was born April 5, 1999. On March 14, 2007, a police officer presented a program on body safety at C.A.M.'s elementary school. The officer taught children how and to whom to report physical and sexual abuse. When the children returned to their classrooms, they were given slips of paper on which they could indicate if they wished to report problems. Seven-year-old C.A.M. indicated she wished to talk to someone.

A department of child services caseworker, Karena Hernandez, interviewed C.A.M. in a secluded area of the elementary school. Travis Bickel, a police officer, was also present at the interview. C.A.M. first reported that a babysitter had hit her, but further questioning revealed C.A.M.'s mother had removed C.A.M. from the care of that babysitter upon finding out about it. Caseworker Hernandez then asked if anyone else had done any touching that C.A.M. wished to report, and C.A.M. reported C.R.M. had sexually abused her and another brother in their mother's bedroom three years earlier. C.A.M. described C.R.M. asking them to play a game, in which he pulled his pants down and had his siblings take turns putting their mouths on his penis. C.A.M. said C.R.M. pushed her head down with his hands when she put her mouth on his penis. C.A.M. also

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[1] Ind. Code § 35-42-4-3(a).

reported C.R.M. putting his penis "on her butt," (Tr. at 248), and handcuffing her hands behind her back. C.A.M. reported her mother already knew about these events, and C.A.M. was upset that Caseworker Hernandez would have to talk to her mother.

The next morning, C.A.M.'s mother brought her to McKenzie's Hope, a child advocacy center, for a formal videotaped interview with Caseworker Hernandez. C.A.M. expressed great concern about her family being angry and fighting the night before and about whether C.R.M. would be removed from his family or go to jail. After being reassured that she was safe to talk, C.A.M. asserted she had been telling the truth at the school, she repeated the allegations made the previous day, and she provided additional details.

On March 16, 2007, the court held a detention hearing and found probable cause to believe C.R.M. was a delinquent child. On March 19, 2007, the State filed a petition alleging C.R.M. "did perform and/or submit to sexual intercourse and/or deviate sexual conduct with a child under fourteen (14) years of age . . . C.A.M., born on 4/5/1999." (App. at 98.) That day, the court placed C.R.M. in the custody of an uncle.

The court held a hearing to determine the admissibility of hearsay evidence from C.A.M., including Caseworker Hernandez's reiteration of statements C.A.M. made during the interview at the school and a videotape of the interview at McKenzie's Hope. Thereafter, the court found C.A.M. unavailable to testify at the fact-finding hearing and allowed certain hearsay evidence to be admitted.

Nevertheless, by agreement of the parties, C.A.M. testified at the hearing. The court admitted the hearsay testimony from Caseworker Hernandez regarding statements

by C.A.M. and also admitted the videotaped interview of C.A.M. The court found C.R.M. to be a delinquent for committing child molesting.

DISCUSSION AND DECISION

Trial courts have broad discretion to admit or exclude evidence, and we reverse such a decision only if "it represents a manifest abuse of discretion that results in the denial of a fair trial." *Agilera v. State*, 862 N.E.2d 298, 302 (Ind. Ct. App. 2007), *trans. denied* 869 N.E.2d 457 (Ind. 2007). An abuse of discretion occurs if a decision is clearly against the logic and effect of the facts and circumstances before the court or if it misinterprets the law. *Id.*

The protected person statute, Ind. Code § 35-37-4-6, indicates when evidence that is typically inadmissible may be admitted in cases involving crimes against children and disabled individuals:

> A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:
> (1) The court finds, in a hearing:
> (A) conducted outside the presence of the jury; and
> (B) attended by the protected person;
> that the time, content, and circumstances of the statement or videotape provided sufficient indications of reliability.
> (2) The protected person:
> (A) testifies at the trial; or . . .

Ind. Code § 35-37-4-6(e). Because the protected person statute "impinges upon the ordinary evidentiary regime," the trial court's decision involves "a special level of judicial responsibility." *Agilera*, 862 N.E.2d at 302.

C.A.M. testified at trial, which meets the requirement of subsection (e)(2).

Accordingly, to admit C.A.M.'s statements to Caseworker Hernandez at the school or the videotape of C.A.M. at McKenzie's Hope, the court had to find "the time, content, and circumstances" of those statements "provided sufficient indications of reliability" under subsection (e)(1). To determine reliability, courts may consider: "(1) the time and circumstances of the statement, (2) whether there was significant opportunity for coaching, (3) the nature of the questioning, (4) whether there was a motive to fabricate, (5) use of age appropriate terminology, and (6) spontaneity and repetition." *Id.* at 304.

Regarding C.A.M.'s statements, the trial court found, in relevant part:

> 7. That the child was not coached prior to talking to case manager Karena Hernandez on March 14, 2007 at [the] School since no one knew she was going to come forward and ask to talk with a caseworker.
> 8. The statement to [the] School was given at the child's request.
> 9. That the child was returned home and no one spoke with the child prior to the taped interview at McKenzie's Hope.
> 10. That the child used age appropriate words, i.e.: winki and white stuff came out.
> 11. That the statements were the same in both meetings the child had with Karena Hernandez.
> 12. That the DVD and testimony gave no indications that the child was led, coerced or forced to make a statement.
> 13. The interview was non[-]threatening and the "finding words" framework was used by Karena Hernandez.
> 14. The child provided a clear statement of what occurred when interviewed.
> 15. There is no indication that the child has any motive to fabricate and, in fact was concerned her mother would be upset that she told the story of the events. Child further indicated that the touching stopped when she was age five.
> 16. The child was available for cross[-]examination; was given the oath; took the stand and testified.
> 17. Child made statement before questions were asked that appeared to be the result of coaching that: she had lied earlier and thought she had dreamed the events.
> 18. Child was cross examined at length and wanted to say she dreamed

it all.

19. That defense counsel had child agree that she lied. Child would still try to say it was a dream.
20. The requirements of I.C. 35-37-4-6 have been met.

(Appellant's Br. at 24-25.)

C.R.M. has not challenged any of the trial court's specific findings, which provide overwhelming support for finding C.A.M.'s pre-trial statements to Hernandez were reliable. Rather, C.R.M. argues C.A.M's statements were unreliable, and thus inadmissible, because: (1) the reported abuse was over three years old; (2) her report occurred during "a process designed . . . to uncover possible criminal activity," (Appellant's Br. at 15); and (3) C.A.M.'s trial testimony differed from the earlier reports.

While the educational presentation at C.A.M.'s school created an opportunity for C.A.M. to learn some "touches" are inappropriate and should be reported to trustworthy adults, it was not a situation where a child was coached to make a false report or given a motive to fabricate an abuse story. The decision to speak to someone after the presentation was made by C.A.M. alone. Caseworker Hernandez did not ask leading questions or suggest abuse scenarios to C.A.M. The abuse C.A.M. reported occurred three years earlier, but the report was spontaneous and repeated the following day.

When C.A.M. testified at the child hearsay hearing, she began by answering simple questions regarding her name, age, school, teacher, and when school started for the year. Then, after counsel said: "O.k. [C.A.M.], I want to talk to you regarding some allegations that you have made um, against your brother [C.R.M.,]" the following dialogue occurred:

A There's one thing I need to say before.
Q O.k.
A Um, some of the stuff I couldn't remember correctly so some of it's a lie.
Q O.k. Tell me what's a lie that you made.
A I forgot, I, I, um, I forget, but I know some of it was a lie.
Q Well, why do, why do you say you forget but you, some of it was a lie? How do you know that some of it was a lie?
A Because, um, my, I kind of talked to my mom and I kind of forgot a lot of stuff and some of it was a lie.

(Tr. at 156.) This testimony supports finding C.A.M. had been coached to change her story and recant her earlier version of events.

We can imagine circumstances where recantation at trial of a report of abuse occurring three years earlier would undermine the reliability of the child's initial report. This is not such a case. After reviewing the entire record, we see no error in the court's finding the statements displayed sufficient indications of reliability to be admissible under the protected person statute. Because the evidence was admissible and supports the court's judgment, we affirm the court's declaration that C.R.M. is a delinquent child.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.